



Federal Communications Commission
Washington, D.C. 20554

October 18, 2021

DA 21-1307

Small Entity Compliance Guide

Rules for Interstate Inmate Calling Services

FCC 21-60
WC Docket No. 12-375
Released: May 24, 2021

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
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I. OBJECTIVES OF THE PROCEEDING

In the *Rules for Interstate Inmate Calling Services*, Third Report and Order, Order On Reconsideration, and Fifth Further Notice Of Proposed Rulemaking, WC Docket No. 12-375, FCC 21-60 (rel. May 24, 2021) (*Third Report and Order*), the Federal Communications Commission (the Commission) acted to reduce rates for interstate inmate calling services (ICS) and, for the first time, capped international rates.

Unlike virtually everyone else in the United States, incarcerated people have no choice in their telephone service provider. Instead, they must use a service provider chosen by the correctional facility, and that provider often has little or no incentive to charge competitive rates similar to those paid by non-incarcerated individuals. Although the Commission already had interim rate caps in place for interstate calls, it further reduced those caps in the *Third Report and Order* and adopted new interim rate caps for international calls. The new interim rate caps will reduce the burden on incarcerated people and their families by helping to ensure that prices of interstate and international ICS calls are just and reasonable.

The Commission adopted new interim rate caps that differentiate between prisons and jails—and among jails based on the number of people incarcerated—and that may differ in structure depending on whether a correctional facility is obligated to pay site commissions by law or by contract. The Commission also reformed the current treatment of site commission payments to permit recovery only of the portions of such payments related specifically to inmate calling services and required providers to list site commission-related charges separately on consumers' bills. Additionally, the Commission reformed the ancillary service third-party transaction fee caps for calls that are billed on a single per-call basis, and for charges for transferring or processing third-party financial transactions.

II. COMPLIANCE REQUIREMENTS

1. Rate Caps [47 CFR § 64.6030]

Under the previous interim rate caps, the Commission distinguished between prepaid, debit, and collect calling with different rate caps. In the *Third Report and Order*, the Commission ended this distinction, and eliminated separate rate caps for interstate collect calls. Thus, the same interim rate caps now apply regardless of whether a call is prepaid, debit, or collect. The new interim rate caps do vary, however, based on the type of facility in which the incarcerated individual resides. Under the new interstate rate caps, all interstate calls from jails with an average daily population (ADP) below 1,000 inmates are now capped at \$0.21 per minute. At jails with an ADP of 1,000 or more, interstate calls are now capped at \$0.14 per minute. Finally, at prisons, interstate calls are now capped at \$0.12 per minute.

2. Rate Caps for Site Commission Payments [47 CFR § 64.6110]

The Commission adopted new interim rate cap components reflecting two different types of site commission payments—those required by law or regulation, and those that are the result of negotiated agreements. The site commission rate cap component, called the “facility rate cap component,” does not apply to jails with ADPs below 1,000, which remain subject to the overall \$0.21 per minute cap.

2.1. Rate Caps Mandated by Laws or Regulations

The Commission allows providers serving larger jails, with an ADP of 1,000 or more, and prisons to recover the cost of legally mandated site commissions, without any markup, as a separate component of the total allowed interstate and international rate caps. However, no provider may charge a total interstate rate for any interstate call from any size facility of more than \$0.21 per minute. Providers serving prisons and larger jails may therefore impose the facility rate cap component at the level required to cover the costs of any legally mandated site commission—i.e., those required by law or regulation—provided that the

resulting cumulative total rate does not exceed \$0.21 per minute.

The Commission imposed additional transparency requirements surrounding charges for site commissions. Where site commissions stem from a law or regulation, providers must make the following new billing disclosures to their consumers:

1. Specify the state statute, law, or regulation which gives rise to the mandatory nature of the obligation to pay site commissions.
2. Disclose the cost per-call or per-minute for any site commissions which are based on a percentage of revenues.
3. Identify the total amount of this site commission component charged for any interstate and international calls on the bill.

Not all mandatory site commission payments may be easily expressed as a percentage of revenue or easily converted to a per-call or per-minute rate. In those situations, providers must use their best judgment to comply with the disclosure requirements.

2.2. Rate Caps Mandated by Contract

Where providers pay site commissions which are not legally mandated, but are agreed to by contract with a correctional institution, providers at larger jails and prisons may recover up to \$0.02 per minute from their end users, to account for facility costs. Thus, providers that have to pay contractual site commissions to serve jails with an ADP of 1,000 or more, may charge up to \$0.16 per minute total for interstate ICS (the \$0.14 per minute allowed under the new interim rate caps plus up to \$0.02 per minute for the site commission). For providers paying contractual site commission to serve prisons, the total recoverable rate for interstate ICS is \$0.14 per minute total (the \$0.12 per minute allowed under the new interim rate caps plus up to \$0.02 per minute for the site commission).

The Commission also imposed additional transparency requirements related to charges for contractual site commissions. Where site commissions stem from a contractual obligation, providers must make the following new billing disclosures to their consumers:

1. Clearly label the charges related to site commissions on the customers' bills and indicate that this rate component is required by the correctional facility under the terms of its contract with the provider.
2. Show the charge as an additional (up to \$0.02, as applicable) per-minute rate on top of the provider-related per-minute rate.
3. Compute the total amount attributable to the contractual site commission charged to the customer for that call. This can be determined by multiplying the additional charge (up to \$0.02 per minute, as applicable) by the number of interstate and international minutes reflected on that bill.

3. Waiver Process for Outliers [47 CFR § 64.6120]

The Commission modified the waiver process to require that any provider seeking a waiver of the current interim rate caps or ancillary fee caps must do so either on a facility-by-facility or on a contract-wide basis.

To be granted, a petition for waiver must:

1. Demonstrate that good cause exists for waiving the Commission's rate or fee caps at a given facility, group of facilities, or under a particular contract and that strict compliance with the applicable rate or fee caps would be inconsistent with the public interest.
2. Include a specific explanation of why the waiver standard is met in that particular case. The explanation should go beyond just listing the harms that will be experienced by the provider.
3. Include all the required financial data and other information needed to verify the provider's assertions. The provider must also be prepared to provide the Commission with additional information as

necessary.

4. Include:

- a. The provider's total company costs;
- b. The methods the provider used to identify, allocate, and assign its direct and indirect costs of providing interstate and international inmate calling services between its inmate calling services and other operations, and to assign its direct costs to and allocate its indirect costs among the correctional facilities which the provider serves;
- c. The demand for interstate and international inmate calling services at each correctional facility the provider serves;
- d. The revenue or other compensation the provider receives from the provision of interstate and international inmate calling services at each correctional facility for which it seeks a waiver;
- e. A complete and unredacted copy of the contract for inmate calling services at the correctional facility for which it seeks a waiver, including any amendments;
- f. Copies of the correctional facility's initial request for proposals and any amendments thereto, the provider's bid in response to that request, and any responses thereto (or a statement that the provider no longer has access to those documents);
- g. A written explanation of how and why the circumstances associated with that correctional facility or contract for which the provider seeks a waiver differ from the circumstances at other correctional facilities served by that provider, if applicable; and
- h. An attestation from a company officer that all of the information included in the waiver petition and accompanying documents is complete and correct.

4. International Rate Caps [47 CFR § 64.6030; 47 CFR § 64.6110]

The Commission also implemented interim rate caps for international calls. The interim international rate cap for calls from a particular facility is equal to the Commission's applicable total per-minute interstate rate cap for that facility, plus the average per-minute amount the provider paid its underlying wholesale international carriers to terminate international calls to the subject "international destination" over the preceding calendar quarter. Providers must determine this average per-minute amount paid for calls to each international destination for each calendar quarter, and then adjust their maximum international per-minute rate caps based on such determination within one month of the end of each calendar quarter.

To ensure that any international call termination charges are transparent to consumers, the Commission requires providers to:

1. Disclose, as a separate line item on inmate calling services bills, any international charges that are passed through to consumers.
2. Clearly, accurately, and conspicuously disclose those charges on the providers' websites or in another reasonable manner readily available to consumers.
3. Retain documentation supporting any charges for international termination that are passed through to consumers. Providers must also provide such documentation, including any applicable contracts, to the Commission upon request.

5. Ancillary Fee Cap for Single-Call Services and Third-Party Transaction Fees [47 CFR § 64.6020]

The Commission revised its rules for single-call services and third-party financial transaction fees to establish a uniform cap for both types of ancillary service fees charged in connection with interstate or international inmate calling services. The Commission limited the third-party transaction fees for single-call services that providers may pass through to consumers to \$6.95 per transaction.

The Commission does not prohibit providers from entering into revenue-sharing agreements with third parties, but providers may not pass on fees exceeding \$6.95 per transaction—whether or not they are associated with such agreements—to incarcerated people and their families. Finally, no third-party transaction fee may be charged when a third party is not involved directly in a particular transaction.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Third Report and Order* imposes new recordkeeping and reporting requirements upon providers. Providers must make new disclosures on consumer bills related to legally mandated site commissions, contractually mandated site commissions, and international calls, as described in the transparency requirements mentioned in the respective sections above. The *Third Report and Order* also requires providers wishing to apply for a waiver of the current interim rate caps or ancillary fee caps to prepare additional appropriate documentation as part of their waiver application, as detailed in the section above.

IV. IMPLEMENTATION DATE

Most of the requirements for inmate calling services providers adopted in the *Third Report and Order*, including the new interim rate caps, will become effective on October 28, 2021. However, the new billing disclosure requirements regarding site commissions and international rates (47 C.F.R. § 64.6110) and the new requirements for waiver requests (47 C.F.R. § 64.6120) are subject to Office of Management and Budget approval, pursuant to the Paperwork Reduction Act. These requirements will not take effect until they are approved by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing when these requirements become effective.

V. INTERNET LINKS

A copy of the *Third Report and Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-21-60A1.pdf>.

A copy of the Federal Register Summary of the *Third Report and Order*, 86 Fed. Reg. 40682 (July 28, 2021) is available at: <https://www.federalregister.gov/documents/2021/07/28/2021-14730/rates-for-interstate-inmate-calling-services>.